

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA**

Chief Judge Fredrick E. Clement  
Sacramento Federal Courthouse  
501 I Street, 7<sup>th</sup> Floor  
Courtroom 28, Department A  
Sacramento, California

**DAY: MONDAY**  
**DATE: NOVEMBER 7, 2022**  
**CALENDAR: 1:30 P.M. CHAPTERS 9, 11 AND 12 CASES**

**RULINGS**

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling.

**"No Ruling"** means the likely disposition of the matter will not be disclosed in advance of the hearing. The matter will be called; parties wishing to be heard should rise and be heard.

**"Tentative Ruling"** means the likely disposition, and the reasons therefor, are set forth herein. The matter will be called. Aggrieved parties or parties for whom written opposition was not required should rise and be heard. Parties favored by the tentative ruling need not appear. Non-appearing parties are advised that the court may adopt a ruling other than that set forth herein without further hearing or notice.

**"Final Ruling"** means that the matter will be resolved in the manner, and for the reasons, indicated below. The matter will not be called; parties and/or counsel need not appear and will not be heard on the matter.

**CHANGES TO PREVIOUSLY PUBLISHED RULINGS**

On occasion, the court will change its intended ruling on some of the matters to be called and will republish its rulings. The parties and counsel are advised to recheck the posted rulings after 3:00 p.m. on the next business day prior to the hearing. Any such changed ruling will be preceded by the following bold face text: **"[Since posting its original rulings, the court has changed its intended ruling on this matter]"**.

**ERRORS IN RULINGS**

Clerical errors of an insignificant nature, e.g., nomenclature ("2017 Honda Accord," rather than "2016 Honda Accord"), amounts, ("\$880," not "\$808"), may be corrected in (1) tentative rulings by appearance at the hearing; or (2) final rulings by appropriate ex parte application. Fed. R. Civ. P. 60(a) *incorporated by* Fed. R. Bankr. P. 9024. All other errors, including those occasioned by mistake, inadvertence, surprise, or excusable neglect, must be corrected by noticed motion. Fed. R. Bankr. P. 60(b), *incorporated by* Fed. R. Bankr. P. 9023.

1. [21-22404](#)-A-11     **IN RE: PAR 5 PROPERTY INVESTMENTS, LLC**  
[DL-9](#)

OMNIBUS OBJECTION TO CLAIMS  
9-12-2022    [\[337\]](#)

IAIN MACDONALD/ATTY. FOR DBT.  
WALTER DAHL/ATTY. FOR MV.

### **Final Ruling**

**Objection:** Omnibus Objection to Claims

**Notice:** LBR 3007-1(b)(1); written opposition required

**Disposition:** Sustained

**Order:** Prepared by objecting party

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this objection. None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

### **BACKGROUND**

This Subchapter V case was filed on June 29, 2021.

Subchapter V Trustee, Walter Dahl objects to the allowance of all or any portion of the forty-three (43) employee wage compensation claims set forth in the debtor's Schedule E/F. A complete listing of the claims to which the trustee objects in this omnibus objection are contained in Exhibit A filed with the objection. See Exhibit A, ECF No. 340. The objection is also supported by the Declaration of Danelle Stumbo, ECF No. 339. Ms. Stumbo was the debtor's former manager.

The objection contends that the list of employees was prepared in anticipation of filing the Chapter 11, but that the debtor continued to operate its business while preparations to file the bankruptcy were ongoing as well as during the ordinary course of business after the filing of the case while the debtor was the Debtor in Possession. See Objection, 3:17-23, ECF No. 337.

The debtor was able to disburse net payroll during this period and thus all employees were paid in full prior to the filing of Schedules E/F on July 27, 2022. Despite full payment Schedules E/F were not updated prior to filing. See *id.*, 3:19-28, 4:1-2. The trustee contends that any disbursement for Employee Wages would result in payment of debt which has already been satisfied. See *id.*, 4:3-5.

## OMNIBUS OBJECTION

A proof of claim or interest is deemed filed under section 501 of this title for any claim or interest that appears in the schedules filed under section 521(a)(1) or 1106(a)(2) of this title, except a claim or interest that is scheduled as disputed, contingent, or unliquidated.

11 U.S.C. § 1111(A).

The schedule of liabilities filed pursuant to § 521(1) of the Code shall constitute prima facie evidence of the validity and amount of the claims of creditors, unless they are scheduled as disputed, contingent, or unliquidated. It shall not be necessary for a creditor or equity security holder to file a proof of claim or interest except as provided in subdivision (c)(2) of this rule.

Fed. R. Bankr. P. 3003(b)(1).

As the claims to which the trustee objects are designated in Schedule E for wages, salaries or commissions earned within the 180 days prior to the filings of the bankruptcy they would be entitled to priority under 11 U.S.C. § 507 (a)(4). Thus, absent the trustee's timely objection, claims which have already been satisfied would be allowed and paid.

Subject to subdivision (e), objections to more than one claim may be joined in an omnibus objection if all the claims were filed by the same entity, or the objections are based solely on the grounds that the claims should be disallowed, in whole or in part, because:

- (1) they duplicate other claims;
- (2) they have been filed in the wrong case;
- (3) they have been amended by subsequently filed proofs of claim;
- (4) they were not timely filed;
- (5) *they have been satisfied or released during the case in accordance with the Code, applicable rules, or a court order;*
- (6) they were presented in a form that does not comply with applicable rules, and the objection states that the objector is unable to determine the validity of the claim because of the noncompliance;
- (7) they are interests, rather than claims; or
- (8) they assert priority in an amount that exceeds the maximum amount under § 507 of the Code.

Fed. R. Bankr. P. 3007 (emphasis added).

This omnibus objection to respondents' claims is based solely on the grounds provided in Rule 3007(d)(5) because the claims were paid during the bankruptcy while the debtor was authorized to operate in

the ordinary course of business while it was the Debtor in Possession, and pre-petition. See, Declaration of Danelle Stumbo, 2:4-14, ECF No. 339.

The trustee's objection satisfies the requirements of Fed. R. Bankr. P. 3007(e).

The court sustains the objection and disallows the forty-three (43) priority employee compensation claims listed on the debtor's Schedule E/F as described in the objection and the contemporaneously filed Exhibit A, ECF No. 340. The trustee shall prepare the order in accordance with this ruling.

2. [22-20632](#)-A-11     **IN RE: SOUTHGATE TOWN AND TERRACE HOMES,**  
INC.  
[CAG-4](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
10-11-2022    [\[213\]](#)

STEPHEN REYNOLDS/ATTY. FOR DBT.  
ELISE STOKES/ATTY. FOR MV.  
CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT VS.  
RESPONSIVE PLEADING

### **Tentative Ruling**

**Motion:** Stay Relief

**Notice:** LBR 9014-1(f)(1); written opposition required

**Disposition:** Granted

**Order:** Civil minute order

Creditor California Department of Housing and Community Development moves for stay relief with respect to 7537 Franklin Blvd., Sacramento, California. Debtor Southgate Town and Terrace Homes opposes the motion.

### **FACTS**

The debtor owns and operates a 104-unit residential development at 7537 Franklin Blvd., Sacramento, California. It is the debtor's only source of income. It provides its residents with local income housing.

Creditor California Department of Housing and Community Development loaned the debtor \$2.1 million dollars to rehabilitate that property. That loan is memorialized by note and that note is secured by a deed of trust against that property. Unlike most deeds of trust, the deed of trust secures regulatory compliance with California's affordable housing program. Cal. Health & Safety Code § 50504 et seq.

On March 16, 2022, the debtor filed a Chapter 11 bankruptcy.

On June 14, 2022, the debtor filed its plan of reorganization. Plan, ECF NO. 90. That date is 92 days after the date of the petition.

On July 18, 2022, this court designated the case a single asset real estate case. Order, ECF NO. 133.

Since that date the court disapproved the debtor's disclosure statement and order the debtor to file a new plan and disclosure statement.

#### **LAW**

The law on this point is well-settled.

(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—

...

(3) with respect to a stay of an act against single asset real estate under subsection (a), by a creditor whose claim is secured by an interest in such real estate, unless, not later than the date that is 90 days after the entry of the order for relief (or such later date as the court may determine for cause by order entered within that 90-day period) or 30 days after the court determines that the debtor is subject to this paragraph, whichever is later—

(A) the debtor has filed a plan of reorganization that has a reasonable possibility of being confirmed within a reasonable time; or

(B) the debtor has commenced monthly payments that--  
(i) may, in the debtor's sole discretion, notwithstanding section 363(c)(2), be made from rents or other income generated before, on, or after the date of the commencement of the case by or from the property to each creditor whose claim is secured by such real estate (other than a claim secured by a judgment lien or by an unmatured statutory lien); and  
(ii) are in an amount equal to interest at the then applicable nondefault contract rate of interest on the value of the creditor's interest in the real estate...

11 U.S.C. § 362(d)(3).

The burden of proof is allocated as follows:

(g) In any hearing under subsection (d) or (e) of this section concerning relief from the stay of any act under subsection (a) of this section—

(1) the party requesting such relief has the burden of proof on the issue of the debtor's equity in property; and

(2) the party opposing such relief has the burden of proof on all other issues.

11 U.S.C. 362(g).

## **DISCUSSION**

The debtor has must either file a plan “that has a reasonable possibility of being confirmed within a reasonable time” or commence monthly payments to the creditor not later than 90 days after the petition or 30 days after the court determines that the debtor is a single asset debtor. 11 U.S.C. § 362(d)(3). Here, on July 18, 2022, the debtor has determined to be a single asset debtor. Order, ECF No. 133.

Absent a timely confirmable plan, payments, or a timely extension, the court should grant stay relief. 11 U.S.C. § 362(d)(3). First, though timely, the plan is not confirmable. A plan was filed on June 14, 2022. Plan, ECF No. 90. The centerpiece of that plan was rejection of the “Regulatory Agreement” with the movant, which the debtor perceived to be a regulatory contract. Plan Art. 7.01; Mot. Reject Executory Contract, ECF No. 168. This court has already held that the Regulatory Agreement was not an executory contract. Civ. Minutes, ECF No. 201; Order, ECF No. 206. Without the rejection of the contract the plan cannot be confirmed. Monthly payments are inapplicable here since the defaults a regulatory, not monetary. Moreover, the debtor does not argue otherwise. Oppos., ECF No. 220.

Second, this court has not extended time to file a plan. The debtor argues the applicability of this court’s order at the status conference on September 26, 2022. Order, ECF No. 207. Two problems exit. At the outset, any such extension must be made before expiration of the 90-day period following the petition. 11 U.S.C. § 362(d)(3). That date expired June 12, 2022. The order made by this court was more than 3 months later. Moreover, the debtor misconstrues this court’s order. It was never intended to extend the deadlines of § 362(d)(3). That order was issued on the same date that the court disapproved the disclosure statement. Civ. Minutes, ECF No. 200. The court was merely setting a bar date for filing a modified plan. 11 U.S.C. § 1112(b)(4)(J). In effect, this is s a second bar date, protecting all creditors, rather than the creditor specific bar date of § 362(d)(3). For each of these reasons, the motion will be granted.

# **CIVIL MINUTE ORDER**

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

California Department of Housing and Community Development's motion for relief from the automatic stay has been presented to the court. Having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted with respect to 7537 Franklin Blvd., Sacramento, California.

IT IS FURTHER ORDERED that the 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

IT IS FURTHER ORDERED that no other relief is awarded.